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Attorneys for Defendant

Apple Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ASHLEY GJOVIK,

Plaintiff,

v.

APPLE INC.,

Defendant.

Case No. 23-cv-4597-EMC

**[PROPOSED] ORDER GRANTING
DEFENDANT APPLE INC.'S MOTION
TO DISMISS PLAINTIFF'S FIRST
AMENDED COMPLAINT**

Dept: Courtroom 5, 17th Floor
Judge: Honorable Edward M. Chen
Date: February 8, 2024
Time: 1:30 p.m.

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15 Attorneys for Defendant
16 Apple Inc.
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Pending before the Court is Defendant Apple, Inc.’s Motion to Dismiss Plaintiff’s First Amended Complaint. Having considered the relevant papers and pleadings on file with the Court in this matter, as well as the arguments of counsel, the Court determines:

1. The Court **DISMISSES, with prejudice**, Plaintiff’s First Claim under the Sarbanes-Oxley Act (“SOX”) because Plaintiff fails to (1) identify the misrepresentations that support her claim, (2) allege Apple’s alleged conduct constituted mail fraud, wire fraud or bank fraud, or violated any securities laws that can form the predicate of a SOX claim, and (3) allege she complained to a supervisor or other individual at Apple with authority to investigate, or that Apple knew of her complaint to the Securities and Exchange Commission.
2. The Court **DISMISSES, with prejudice**, Plaintiff’s Second Claim under the Dodd-Frank Wall Street Reform and Consumer Protection Act because it is derivative of her SOX claim. A claim under Dodd-Frank requires that Plaintiff allege a violation actionable under SOX, which Plaintiff has not properly alleged.
3. The Court **DISMISSES, with prejudice**, Plaintiff’s Third Claim under the California Bane Civil Rights Act because Plaintiff fails to allege facts showing that Apple interfered with Plaintiff’s constitutional or statutory rights; or that such interference was accompanied by actual or attempted threats, intimidation, or coercion.
4. The Court **DISMISSES, with prejudice**, Plaintiff’s Fourth Claim under the California Ralph Civil Rights Act because Plaintiff does not allege facts suggesting any threat of violence by Apple or that any conduct by Apple was based on her political affiliation or other protected characteristic.
5. The Court **DISMISSES, with prejudice**, Plaintiff’s Fifth Claim under Racketeer Influenced and Corrupt Organizations Act (“RICO”) because the Private Securities Litigation Reform Act (“PSLRA”) bars it. Moreover, Plaintiff fails to allege Apple used or invested money it received from supposed racketeering to injure her, and because she fails to plead the existence of an “enterprise” separate and distinct from Apple or a pattern of racketeering activity.
6. The Court **DISMISSES, with prejudice**, Plaintiff’s Sixth Claim asserting strict liability for

1 ultrahazardous activities because it is time-barred and, even if it were not, operating a
2 facility on a Superfund site and operating a semiconductor facility are not ultrahazardous
3 activities.

4 7. The Court **DISMISSES, with prejudice**, Plaintiff's Seventh Claim under California Labor
5 Code section 1102.5 because Plaintiff fails to allege any facts that would establish a
6 violation of the sole underlying statute she identifies as a predicate for this claim (California
7 Labor Code section 435).

8 8. The Court **DISMISSES, with prejudice**, Plaintiff's Eighth Claim under California Labor
9 Code section 98.6 predicated on an alleged violation of Labor Code section 96(k) because
10 Plaintiff fails to allege she was terminated for asserting a recognized constitutional right.

11 9. The Court **DISMISSES, with prejudice**, Plaintiff's Eleventh Claim for private nuisance
12 under California Civil Code section 3479 because it is time-barred.

13 Accordingly, Defendant Apple Inc.'s Motion to Dismiss is **GRANTED**, and Plaintiff's
14 first, second, third, fourth, fifth, sixth, seventh, eighth, and eleventh claims are **DISMISSED with**
15 **prejudice**, as set forth above.

16 **IT IS SO ORDERED**

17
18 Dated: _____

HON. THOMAS M. CHEN
U.S. DISTRICT COURT JUDGE